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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AT&T Corp. Petition for Declaratory Ruling that Ameritech Ohio's Dialing Parity Cost Recovery Mechanism Violates 47 C.F.R. § 51.215	CC Docket No. 96-98 File No. NSD-L-99-

AT&T CORP. PETITION FOR EXPEDITED DECLARATORY RULING

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Pursuant to Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, AT&T Corp. ("AT&T") hereby respectfully requests an expedited declaratory ruling[1] that the cost recovery mechanism contained in Ameritech Ohio's ("Ameritech") intrastate tariff implementing dialing parity violates 47 C.F.R. § 51.215 and the Commission's Second Local Competition Order.[2]

SUMMARY

Ameritech intends to begin recovering its intraLATA dialing parity ("ILP") implementation costs in a patently unlawful manner as early as February 2000. The Commission's jurisdiction over this matter is clearly established, and all parties, including the Public Utilities Commission of Ohio ("PUCO") and Ameritech, will benefit from an expedited resolution of AT&T's petition.

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1 In order to promote an expedited resolution of this proceeding, AT&T has served this Petition on both the Ohio commission and Ameritech via overnight mail.

2 Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd. 19392 (1996) ("Second Local Competition Order").

In AT&T Corp. v. Iowa Utilities Board,[3] the United States Supreme Court held that the Commission has exclusive authority over dialing parity implementation and cost recovery. In addition, the Commission has encouraged carriers to seek declaratory rulings in situations such as the instant matter. For example, in its orders concerning local number portability ("LNP") implementation, the Commission explicitly urged carriers to seek declaratory relief in the event a carrier or state adopted an LNP cost recovery mechanism that was not competitively neutral: "[I]f a carrier believes that a state has not properly applied the statute or our rules, or if a state's cost recovery mechanism is not competitively neutral because it improperly burdens new entrants with interim number portability costs, the carrier may file a request for declaratory ruling with the Commission ...."[4] This invitation is especially relevant here because the Commission directed state commissions to apply the principles it established for LNP cost recovery to their dialing parity cost recovery mechanisms.[5]

The instant petition concerns Ameritech's unlawful attempt to force competing carriers to bear all of its incremental costs to implement ILP in Ohio. The Second Local Competition Order permitted local exchange carriers to recover only "the incremental costs of dialing parity-specific software, any necessary hardware and signaling system upgrades, and

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3 199 S. Ct. 721, 733 (1999).

4 Fourth Opinion and Order on Reconsideration, Telephone Number Portability, CC Docket No. 95-116, FCC 99-151, ¶ 31 (released July 16, 1999) ("Fourth LNP Reconsideration Order").

5 See Second Local Competition Order, ¶ 89 ("We further conclude that these [dialing parity costs] should be recovered in the same manner as the costs of interim number portability") (citing First Report and Order And Further Notice of Proposed Rulemaking, Telephone Number Portability, 11 FCC Rcd. 8352 (1996) ("LNP Order")).

consumer education costs that are strictly necessary to implement dialing parity."[6] That order also promulgated 47 C.F.R. § 51.215, which authorized states to adopt "competitively neutral" funding mechanisms to allow LECs to recover these incremental costs within a specified framework. Most importantly for purposes of the instant petition, the Commission stressed that a state's funding mechanism must recover dialing parity implementation costs from all providers of telephone exchange and telephone toll service, including incumbent LECs.[7]

In November 1996, three months after the Commission released the Second Local Competition Order, the PUCO adopted Ohio Local Service Guideline X.F. That PUCO guideline provides that the "incremental costs directly associated with the introduction of 1+ intraLATA dialing parity shall be borne by providers of telephone exchange service and telephone toll service." Guideline X.F. further provides that "[those incremental] costs shall be recovered through a Commission-approved switched access per minute of use charge applied to all originating intraLATA switched access minutes generated on lines that are presubscribed for intraLATA toll service."[8]

On its face, this rule could potentially recover the incremental costs of ILP from both incumbent LECs and interexchange carriers ("IXCs"). However, the PUCO's application of this rule to Ameritech's dialing parity tariff is not competitively neutral because it exempts that incumbent LEC ("ILEC") from paying its share of the incremental costs of dialing parity implementation. Specifically, in its orders approving Ameritech's dialing parity tariff, the

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6 Second Local Competition Order, ¶ 95.

7 See id.

8 Local Service Guideline X.F is attached in its entirety as Attachment A.

Commission interpreted Local Service Guideline X.F. to allow Ameritech to exclude its own intraLATA switched access minutes of use ("MOUs") from a dialing parity cost recovery charge that will apply to Ameritech's competitors' intraLATA toll usage. The PUCO concluded that Ameritech incurs "its share" of dialing parity costs in the form of lost toll revenues resulting from competition in the direct-dialed intraLATA toll market, over which Ameritech formerly enjoyed a monopoly in its territory.[9] Thus, the PUCO allowed Ameritech to implement a "per minute of use" ("PMOU") charge that will apply only to intraLATA toll calls made by customers that choose an IXC or CLEC to carry their intraLATA toll calls. This PMOU charge will not apply to intraLATA toll calls made by customers choosing (or choosing to retain) Ameritech as their intraLATA toll carrier.

By purporting to permit Ameritech to recover its ILP implementation costs through a PMOU charge assessed only on competing carriers, Ameritech's dialing parity tariff violates 47 C.F.R. § 51.215 and is therefore unlawful. Ameritech's dialing parity cost-recovery mechanism plainly is not competitively neutral, because it places competitive LECs and IXCs at a significant cost and competitive disadvantage in relation to the incumbent monopolist, which is wholly exempt from this PMOU charge. Ameritech's cost recovery mechanism thus violates this Commission's directive that each LEC "must" recover the incremental costs of dialing parity implementation from "all providers of telephone exchange and telephone toll service in the area served by the LEC, including the LEC."[10]

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9 The PUCO specifically found that "it is reasonable for the LEC to assume its share of the costs of creating a new market for the IXCs is covered by the loss in toll revenues and the 90-day no charge PIC change windows." October 8, 1998 Finding and Order, PUCO Case No. 95-845-TP-COI, p. 5 (attached as Attachment B).

10 47 C.F.R. § 51.215 (emphasis added).

I. THE COMMISSION'S DIALING PARITY RULES REQUIRE RECOVERY OF ILP IMPLEMENTATION COSTS FROM ALL LECS AND IXCS

On August 8, 1996, the Commission released its Second Local Competition Order, which, among other things, promulgated 47 C.F.R. §§ 51.206-215. As noted above, the Supreme Court unequivocally upheld the Commission's authority to adopt these regulations in AT&T Corp. v. Iowa Utilities Board.

The Second Local Competition Order expressly held that "national rules are needed for recovery of dialing parity costs."[11] Accordingly, 47 C.F.R. § 51.215 provides that:

> (a) A LEC may recover the incremental costs necessary for the implementation of toll dialing parity. The LEC must recover such costs from all providers of telephone exchange service and telephone toll service in the area served by the LEC, including that LEC. The LEC shall use a cost recovery mechanism established by the state.
>
> (b) Any cost recovery mechanism for the provision of toll dialing parity pursuant to this section that a state adopts must not:
>
> (1) Give one service provider an appreciable cost advantage over another service provider, when competing for a specific subscriber (i.e., the recovery mechanism may not have a disparate effect on the incremental costs of competing service providers seeking to serve the same customer); or
>
> (2) Have a disparate effect on the ability of competing service providers to earn a normal return on their investment.

The Second Local Competition Order explained that these rules require that the incremental costs of dialing parity implementation "must be recovered from all providers of telephone exchange service and telephone toll service in the area served by a LEC, including that LEC, using a competitively-neutral allocator established by the state."[12]

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11 Second Local Competition Order, ¶ 92.

12 Id., ¶ 95.

In addition to specifying the carriers from whom costs must be recovered, the Second Local Competition Order also defined the ILP costs eligible for recovery. That order found that the recoverable costs of dialing parity implementation fall into three categories: (1) dialing parity-specific switch software, (2) any necessary hardware and signaling system upgrades, and (3) consumer education costs that are strictly necessary to implement dialing parity.[13] The Commission nowhere suggested that an incumbent LEC could somehow offset its responsibility to pay its share of dialing parity implementation costs by the lost toll revenues it might incur as a result of the increased intraLATA competition that Congress sought to foster by enacting § 251(b)(3).

The Commission also ruled that ILP cost recovery should be governed by the same framework of requirements established for interim number portability in its then-recent LNP Order.[14] The LNP Order made clear (as did the Second Local Competition Order) that "a cost recovery mechanism that imposes the entire incremental cost of currently available number portability on a facilities-based new entrant" would not be "competitively neutral."[15] In its recent Fourth LNP Reconsideration Order, the Commission once again affirmed that "imposing the full incremental cost of interim number portability solely on new entrants would place them at an 'appreciable, incremental cost disadvantage relative to another service provider when competing

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13 Id.

14 Id., ¶¶ 92-95.

15 LNP Order, ¶ 134; see generally id., ¶¶ 131-140.

for the same customer' and would, therefore, violate the first criteria of the competitive neutrality mandate."[16]

II. THE PUCO'S DIALING PARITY RULES

On November 7, 1996, the PUCO adopted certain rules it designated as the Ohio Local Service Guidelines. Those guidelines include rules regarding, *inter alia*, the implementation of dialing parity by Ameritech and other ILECs.

Among other dialing parity-related rules, the PUCO adopted Local Service Guideline X.F. governing the manner in which LECs may recover their ILP implementation costs. Local Service Guideline X.F. provides in its entirety that:

> The incremental costs directly associated with the introduction of 1+ dialing parity shall be borne by providers of telephone exchange service and telephone toll service. Costs shall be recovered through a Commission-approved switched access per minute of use charge applied to all originating intraLATA switched access minutes generated on lines presubscribed for intraLATA service. Recovery of these costs shall not include recovery of costs incurred for PIC changes during the initial 90-day no-charge period.

At the time of its adoption, AT&T read the plain language of this guideline to mean that the PUCO intended to include the LEC as one of the "telephone exchange service and telephone toll providers" subject to a PMOU charge. In other words, AT&T reasonably assumed that the PUCO would interpret Local Service Guideline X.F. in a manner that complied with the Second Local Competition Order by requiring LECs to recover their dialing parity

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[16] Fourth LNP Reconsideration Order, ¶50; see also id., ¶ 57 ("a cost recovery mechanism that imposes the entire incremental costs of interim number portability on a facilities-based new entrant violates our competitive neutrality criteria").

implementation costs via a PMOU charge assessed on all intraLATA minutes, including intraLATA services provided by the LEC itself.

AT&T's initial interpretation of Local Service Guideline X.F. was confirmed by the actions of GTE North, Cincinnati Bell Telephone Company, United Telephone Company of Ohio, and Western Reserve Telephone Company, each of which agreed to recover their costs of dialing parity by imposing a PMOU charge on all intraLATA toll minutes originating in their service territories, including their own customers' intraLATA usage.[17]

III. THE AMERITECH DIALING PARITY TARIFF

Ameritech filed its original dialing parity tariff on December 12, 1996, and amended that filing on November 7, 1997.[18] Ameritech's tariff includes language implementing a PMOU charge that mirrors Local Service Guideline X.F.[19] The precise amount of Ameritech's PMOU charge is still unknown (because Ameritech's claimed dialing parity implementation costs are still unknown). Therefore, the tariff presently indicates that Ameritech will file a tariff revision including the amount of the PMOU charge approximately one year after implementation of intraLATA dialing parity. That date is in February 2000.

On January 14, 1999, while the FCC's dialing parity rules were still subject to the *vacatur* imposed by the Eight Circuit in California v. FCC,[20] the PUCO issued an order

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17 Attachment B, pp. 3-4, 5-6.

18 "Ameritech's Dialing Parity Tariff," attached as Attachment D.

19 See id., Part 21, Section 2, Sheet 2.

20 124 F.3d 934 (8th Cir. 1997) vacated in relevant part sub nom. AT&T Corp. v. Iowa Utilities Bd., 199 S. Ct. 721, 733 (1999).

approving Ameritech's amended tariff, including the PMOU charge, as filed. That order is attached as Attachment E.

AT&T sought rehearing of the PUCO's January 14, 1999 order to the extent that it was intended to approve a PMOU charge that exempted Ameritech's own intraLATA usage. AT&T was cognizant of this possibility based on two previous PUCO orders – entered while the Commission's dialing parity rules were still subject to the Eighth Circuit's *vacatur* – in which the PUCO, over the objections of AT&T and other IXCs, approved several independent ILEC tariffs that sought to recover the costs of dialing parity via a PMOU charge that did not apply to those ILECs' own customers' intraLATA usage. Those PUCO orders are attached as Attachments B and C.

On rehearing in the Ameritech tariff case, AT&T and MCI argued, *inter alia*, that the Ameritech cost recovery mechanism violated the Commission's rules, which had been reinstated in their entirety by the United States Supreme Court on January 25, 1999. On March 18, 1999, the PUCO issued an order denying AT&T's application for rehearing of the PUCO's January 14, 1999 order.[21] In April 1999, AT&T filed a complaint for declaratory relief in United States District Court for the Southern District of Ohio (Case No. C2-99-414) seeking a ruling that Ameritech's dialing parity cost recovery mechanism violated federal law. On July 28, 1999, following extensions of the deadline for the PUCO's Answer necessitated by negotiations between the parties, AT&T voluntarily dismissed that complaint with the intent of seeking resolution of this issue at the Commission.

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[21] That PUCO order is attached as Attachment F.

IV. AMERITECH'S DIALING PARITY TARIFF VIOLATES 47 C.F.R. § 51.215 BY PURPORTING TO RELIEVE AMERITECH FROM THE OBLIGATION TO APPLY ITS PMOU CHARGE TO ITS OWN TRAFFIC

Ameritech's Dialing Parity tariff purports to allow Ameritech to recover its incremental costs of implementing dialing parity via a PMOU charge that is not assessed on Ameritech's own intraLATA toll customers' usage. Ameritech's Dialing Parity Tariff, as approved by the PUCO, thus imposes all of Ameritech's incremental costs of implementing dialing parity on Ameritech's competitors. Accordingly, that tariff violates 47 C.F.R. § 51.215, which provides that "[t]he LEC must recover such [incremental] costs from all providers of telephone exchange service and telephone toll service in the area served by the LEC, including that LEC."[22] Ameritech's Dialing Parity Tariff simply cannot be reconciled with the Commission's directive that the incremental costs of dialing parity "must be recovered from all providers of telephone exchange service and telephone toll service."[23]

Ameritech's attempt to recover its dialing parity implementation costs through a PMOU charge applied only to its competitors also violates the Second Local Competition Order's directive that such costs "must be recovered from all providers of telephone exchange service and telephone toll service in the areas served by the LEC, including the LEC, using a competitively neutral allocator established by the state."[24] Ameritech's PMOU allocator is not competitively neutral because it excludes Ameritech's intraLATA toll customers' usage from this charge.

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22 47 U.S.C. § 51.215 (emphasis added).

23 Second Local Competition Order, ¶ 95.

24 Id., ¶ 95.

The Commission's rules make clear that a LEC's dialing parity cost recovery scheme cannot "give one service provider an appreciable cost advantage over another service provider, when competing for a specific subscriber (i.e., the recovery mechanism may not have a disparate effect on the incremental costs of competing service providers seeking to serve the same customer)."[25] By exempting Ameritech's own traffic from its PMOU charge, the Ameritech tariff gives Ameritech precisely such an advantage over other Ohio carriers that seek to compete with it. If a customer chooses an IXC or CLEC as its intraLATA toll carrier, those carriers will be assessed the PMOU charge. However, Ameritech will not pay the PMOU charge on its own intraLATA traffic. The Commission has already found that such a result would give an incumbent LEC a *per se* unlawful cost advantage. See, e.g., Second Local Competition Order, ¶ 91 ("We therefore reject the argument of those commenters that assert that only new entrants should bear the costs of implementing dialing parity, because such an approach would not be competitively neutral."); see also Fourth LNP Reconsideration Order, ¶ 50 ("imposing the full incremental cost of interim number portability solely on new entrants would place them at an 'appreciable, incremental cost disadvantage relative to another service provider when competing for the same customer' and would, therefore, violate the first criteria of the competitive neutrality mandate").

V. AMERITECH'S "LOST REVENUES" ARE NOT RECOVERABLE COSTS OF ILP IMPLEMENTATION

In approving Ameritech's dialing parity tariff, the PUCO sought to rely upon its previous finding that the incremental costs directly associated with the introduction of dialing parity include not only those costs that the Second Local Competition Order permits LECs to

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[25] 47 C.F.R. § 51.215(b)(1).

recover, but also (i) the loss of revenues which ILECs may experience upon the loss of their monopoly over direct-dialed intraLATA toll services; and (ii) the lost revenue relating to the 90-day waiver of the Ohio $5.00 customer-specific charge for PIC changes for the first 90 days of the presubscription period. The PUCO originally explained this departure from the Commission's cost recovery mandates as follows:

> AT&T and MCI are incorrect when they argue that, under the cost recovery mechanism . . . the incumbent LECs are not sharing the costs of implementing 1+ intraLATA dialing parity. Consistent with the first sentence of guideline X.F., both the LECs and the IXCs are sharing in the costs associated with 1+ intraLATA dialing parity. They are just absorbing costs in a different form. As we clearly pointed out in our October 8, 1998 finding and order, through the introduction of 1+ intraLATA dialing parity, the incumbent LECs face toll revenue losses and must absorb the costs associated with the 90-day no charge PIC changes. The IXCs, on the other hand, pay a charge for each minute of use generated by customers who presubscribe with the IXCs. Since the IXCs stand to gain significantly from the opportunity afforded by opening the intraLATA toll market to 1+ competition, the Commission believes this to be a fair result.[26]

The Ameritech Dialing Parity Tariff thus rests on the erroneous and unlawful principle that an ILEC's lost toll revenues and waiver of a PUCO-imposed $5.00 PIC-change charge for 90 days somehow constitute "incremental costs" of dialing parity implementation that an incumbent LEC may bear in lieu of a PMOU charge. That holding is directly contrary to the Commission's rules and orders. The Commission narrowly defined the costs that are "incremental" to ILP implementation and that are therefore recoverable. The Second Local Competition Order made plain that these costs fall into a limited set of three categories: (1) the

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[26] Attachment C, p. 4.

cost of dialing-parity specific software, (2) the cost of hardware and signaling system upgrades necessary for dialing parity, and (3) consumer education costs.[27]

The notion that lost revenues resulting from the end of an ILEC's monopoly control over direct-dialed intraLATA toll services are somehow "incremental" to dialing parity implementation is repugnant to the purpose and intent of the 1996 Act. As the Commission made clear in the First Local Competition Order, lost revenue resulting from competition is simply not a "cost" recoverable by incumbent LECs.[28] Indeed, if ILECs were to be afforded remuneration for such "losses," then Congress' goal of spurring lower prices through competition would be unattainable, as any price reductions for intraLATA toll services would be required to be offset by side payments from competitors to former direct-dialed intraLATA toll monopolists. Permitting such offsets for "lost revenue" also would directly undermine the Commission's carefully crafted requirement of competitive neutrality, by granting a cost advantage to incumbent LECs paid for by carriers seeking to enter the market for direct-dialed intraLATA services.

The PUCO also sought to explain its approval of Ameritech's cost recovery mechanism by observing that because "IXCs stand to gain significantly from the opportunity afforded by opening the intraLATA toll market to 1+ competition, the Commission believes this to be a fair result."[29] However, this view of dialing parity cost recovery is based on the concept

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27 Second Local Competition Order, ¶ 95.

28 See First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶¶ 708-11 (1966) ("First Local Competition Order"); 47 C.F.R. 51.505(d)(3).

29 Attachment C, p. 4.

of cost causation – that is, the mistaken notion that because competitive intraLATA toll carriers stand to gain from dialing parity, they should bear the costs of implementing that capability in ILECs' networks. The Commission has, however, explicitly rejected that approach in its orders addressing cost recovery for number portability and dialing parity, and has ruled that such schemes would not be competitively neutral. See Fourth LNP Reconsideration Order, ¶ 27 ("a cost causative basis for pricing number portability could defeat the purpose for which number portability was mandated"); Third Report and Order, Telephone Number Portability, 13 FCC Rcd. 11701, 11726-27, ¶ 41 (1998) ("The Commission interpreted Congress's competitive neutrality mandate to require the Commission to depart from cost-causation principles"); Second Local Competition Order, ¶ 93 ("[O]ur recent LNP Order provides guidance regarding which costs incumbent LECs should be able to recover in implementing dialing parity, as well as how such costs should be recovered.").[30]

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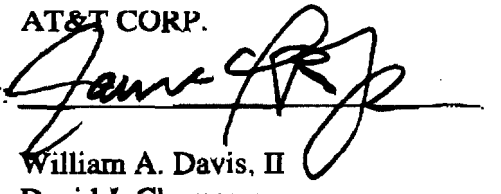
30 The PUCO sought to justify Ameritech's exemption from the PMOU charge imposed by Ameritech's ILP tariff by observing that PUCO Guideline X.F. applies to only to "presubscribed lines." The PUCO suggested that an intraLATA toll customer that chooses to retain Ameritech as its intraLATA toll carrier has not "presubscribed" to Ameritech, because that customer initially was assigned to that BOC at a time when no other carrier could be selected to carry intraLATA toll calls on a direct-dialed basis. That construction of the term "presubscribed" is contrary to both the Commission's dialing parity rules and common sense. Following implementation of ILP, any customer who opts to use Ameritech's intraLATA toll services rather than those of another carrier must be deemed to be "presubscribed" to Ameritech. Any other result would render the Commission's competitive neutrality requirement utterly hollow, and would grant Ameritech a valuable competitive advantage (in addition to the advantage already conferred by the fact that Ameritech initially controlled 100% of the direct-dialed intraLATA toll market in its territory) simply on the basis of Ameritech's previous monopoly position.

CONCLUSION

For the foregoing reasons, AT&T respectfully requests that Commission rule that Ameritech's Dialing Parity Tariff, as interpreted and approved by the PUCO, is contrary to the Commission's rules and orders governing dialing parity cost recovery.

Respectfully submitted,

AT&T CORP.

By: 

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November 12, 1999

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LOCAL SERVICE GUIDELINES

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provide administrative functional requirements that include, but are not limited to:

a. Provisioning reports comparing that LEC's service to LECs purchasing telecommunications services for resale with the service it provides to itself in its own operation; and

b. Branding of services by the LEC providing such services for resale.

C. Restrictions on Resale

1. Each LEC shall make its services available for resale, but may, subject to Commission approval, place reasonable restrictions on the resale of residential services to business customers. While a LEC may file an application with the Commission requesting other reasonable resale restrictions, such an application must be narrowly focused.

2. Those LECs purchasing lifeline services for resale may only resell those services to qualifying lifeline customers.

X. DIALING PARITY/1+ INTRALATA PRESUBSCRIPTION

A. Principle

ILECs and NECs shall be required to provide dialing parity, on both an intra and interLATA basis, to all interconnecting toll carriers subject to the conditions set forth below. NECs shall not become secondary carriers under ORP/SCO.

B. Time Frame

1. ILECs that are not legally constrained from offering interLATA services shall have implemented 1+ dialing parity on an intraLATA basis for all their subscribers by August 8, 1997.

2. Ameritech Ohio shall have implemented 1+ dialing parity on an intraLATA basis for all its subscribers at such time that it receives approval of the federal competitive checklist for Bell Operating Companies pursuant to Part III, Section 271(c)(2)(B) of the 1996 Act, or by February 9, 1999, whichever occurs sooner.

3. NECs shall implement 1+ dialing parity on an intraLATA basis upon their initial offering of certified local exchange service.

C. **Presubscribed Interexchange Carrier (PIC) Methodology**

1. **Definitions**

a. **1-PIC**

Subscribers would select either their LEC or their interLATA carrier to carry all intraLATA ~~and interLATA~~ toll traffic.

b. **Full 2-PIC**

Subscribers would select an IXC for interLATA calls and have the ability to select either their interLATA carrier, LEC, or an alternative intraLATA toll provider to carry their intraLATA toll traffic.

c. **Modified 2-PIC**

Subscribers would select an IXC for interLATA calls and select either the same IXC or their existing LEC to carry their intraLATA toll traffic.

d. **Smart or Multi-PIC**

Subscribers would be able to select multiple carriers for various subdivisions of their interLATA and intraLATA toll calls.

2. **Implementation**

In the absence of readily available and economically feasible Smart or Multi-PIC technology, 1+ dialing parity on an intraLATA basis shall be implemented on a Full 2-PIC methodology.

D. **Balloting**

Balloting shall not be used. LECs shall inform their current customers of the options to select presubscribed intraLATA toll carriers no later than 60 calendar days following implementation of intraLATA toll presubscription.

Such notices must be submitted by the LEC to the Commission's Consumer Services Department for approval at least 30 calendar days prior to sending them to its customers. Toll carriers may provide such information to customers regarding the availability of 1+ dialing parity as they deem appropriate, except that nothing herein shall authorize any

otherwise unauthorized or unlawful use of the LEC's name, marks, logo, trademarks, or tradenames by the toll carriers.

E. **Presubscription Procedures**

1. **Current subscribers CHOOSING A CARRIER**

Initial requests of current subscribers for an intraLATA carrier change will be provided free of charge from the date of 1+ intraLATA dialing parity implementation until 90 days after the date of 1+ intraLATA toll dialing parity implementation or 90 days after customer notice was initially sent, whichever is later. A LEC service order charge of $5.00 for the first line, and $1.50 for each additional line, shall be applied to any subsequent request to change intraLATA interexchange service providers.

2. **Current subscribers who do not choose a carrier**

The Commission will determine in each LEC's case containing intraLATA toll dialing parity implementation procedures the appropriate procedure to be utilized by a carrier in situations where a current customer does not choose a carrier.

3. **New subscribers placing an order**

New subscribers will be asked to select an interLATA and intraLATA toll carrier at the time they place an order with the LEC. The LEC will process the customer's order for both intra and interLATA service. The selected carriers will confirm their respective customers' verbal selections by third-party verification or return written confirmation notices. All new subscribers' initial requests for either intra or interLATA interexchange service shall be provided free of charge.

4. **NEW subscribers who do not choose a carrier**

If a subscriber is unable to make a selection at the time he/she places an order establishing local exchange service, the LEC will read a random listing of all available intraLATA carriers to aid in the selection. If a selection is still not possible, the LEC will inform the subscriber that he/she will be given 90 calendar days in which to inform the LEC of an intraLATA toll carrier selection. During the 90-day period and until the subscriber informs his/her LEC of a choice for intraLATA toll carrier, the customer will not have a presubscribed intraLATA toll carrier, but rather will be required to

dial a carrier access code to route his/her intraLATA toll to the carrier of his/her choice. Subscribers who inform their LEC of their intraLATA toll carrier selection within the 90-day period will not be assessed a service order charge for their initial request. A LEC service order charge of $5.00 for the first line, and $1.50 for each additional line, shall apply to all subsequent requests to change intraLATA interexchange service providers.

F. **Recovery of Costs of Implementation of IntraLATA Dialing Parity**

The incremental costs directly associated with the introduction of 1+ intraLATA dialing parity shall be borne by providers of telephone exchange service and telephone toll service. Costs shall be recovered through a Commission-approved switched access per minute of use charge applied to all originating intraLATA switched access minutes generated on lines that are presubscribed for intraLATA toll service. Recovery of these costs shall not include recovery of costs incurred for PIC changes during the initial 90-day no-charge period.

XI. NONDISCRIMINATION BETWEEN COMPETITORS

A. **Service Requests**

LECs which have achieved interconnection shall report in writing to the chief of the compliance division of the Consumer Services Department and the chief of the telecommunications division of the Utilities Department, within five business days, any denial of subsequent bona fide carrier service request by the interconnecting LEC (e.g., expansion of facilities or maintenance). Denied requests, and requests for service not fulfilled within 30 calendar days, must be documented and justified (in its report to the Commission) by the carrier from whom such services are requested. Such denials will be reviewed pursuant to a complaint process or other Commission-ordered dispute resolution process.

Interconnecting LECs shall report to the chief of the compliance division of the Consumer Services Department and the chief of the telecommunications division of the Utilities Department, any subsequent request for service (e.g., expansion of facilities or maintenance) that remains unfulfilled, or partially unfulfilled, in excess of 30 calendar days.

B. **Telecommunications Performance Measurement Database (TPM)**

All LECs shall be required to file, with the Commission, annual TPM data submissions.

BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues.	)))	Case No. 95-845-TP-COI
And		
In the Matters of the Following Local Exchange Carriers to Amend Their Tariffs to Include An IntraLATA Toll Presubscription Service Offering:	))))	
Germantown Independent Telephone Company	)	Case No. 96-1200-TP-UNC
Ottoville Mutual Telephone Company	)	Case No. 96-1295-TP-ATA
Telephone Service Company	)	Case No. 96-1312-TP-ATA
Sherwood Mutual Telephone Association, Inc.	)	Case No. 96-1313-TP-ATA
The Nova Telephone Company	)	Case No. 96-1314-TP-ATA
The Arthur Mutual Telephone Company	)	Case No. 96-1315-TP-ATA
Ayersville Telephone Company	)	Case No. 96-1316-TP-ATA
Doylestown Telephone Company	)	Case No. 96-1321-TP-ATA
Middle Point Home Telephone Company	)	Case No. 96-1323-TP-ATA
Columbus Grove Telephone Company	)	Case No. 96-1327-TP-ATA
Conneaut Telephone Company	)	Case No. 96-1330-TP-ATA
McClure Telephone Company	)	Case No. 96-1333-TP-ATA
Sycamore Telephone Company	)	Case No. 96-1334-TP-ATA
Minford Telephone Company	)	Case No. 96-1335-TP-ATA
Vaughnsville Telephone Company, Inc.	)	Case No. 96-1337-TP-ATA
Ft. Jennings Telephone Company	)	Case No. 96-1343-TP-ATA
Glandorf Telephone Company, Inc.	)	Case No. 96-1344-TP-ATA
The Farmers Mutual Telephone Company	)	Case No. 96-1345-TP-ATA
ALLTEL Ohio, Inc.	)	Case No. 96-1351-TP-ATA
Western Reserve Telephone Company	)	Case No. 96-1352-TP-ATA
Chillicothe Telephone Company	)	Case No. 96-1355-TP-ATA
New Knoxville Telephone Company	)	Case No. 96-1361-TP-ATA
Ridgeville Telephone Company	)	Case No. 96-1362-TP-ATA
Arcadia Telephone Company	)	Case No. 96-1395-TP-ATA
Little Miami Communications Corporation	)	Case No. 96-1397-TP-ATA
Vanlue Telephone Company	)	Case No. 96-1398-TP-ATA
Oakwood Telephone Company	)	Case No. 96-1399-TP-ATA
Wabash Mutual Telephone Company	)	Case No. 96-1401-TP-ATA

FINDING AND ORDER

The Commission finds:

(1) Section 251(b)(3) of the Telecommunications Act of 1996 requires all local exchange carriers (LECs) to implement dialing parity. On June 12, 1996, the Commission, in Case No. 95-845-TP-COI *In the Matter of the Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues* (Local Service Guidelines), ordered LECs to implement intraLATA toll presubscription by June 12, 1997. By the February 20, 1997 entry on rehearing, the implementation deadline was extended to August 8, 1997.

(2) The above captioned UNC and ATA cases were initiated by each of the LECs to add intraLATA toll presubscription to their service offerings pursuant to the Commission's requirements in the local service guidelines.

The local service guidelines, at X.F., state that the incremental costs directly associated with the implementation of intraLATA toll presubscription shall be borne by providers of telephone exchange service and telephone toll service through a Commission-approved switched access per minute of use (MOU) charge applied to all originating intraLATA switched access minutes generated on intraLATA presubscribed lines.

(3) The Commission approved the intraLATA presubscription tariffs in each of the above captioned UNC and ATA cases. In each of those cases, the Commission also approved a tariffed mechanism for the recovery of the incremental costs associated with the implementation of intraLATA toll presubscription over a 36-month time frame. However, none of the approved tariffs contained an approved MOU rate for the actual recovery of costs. Instead, the Commission ordered the above captioned LECs to track actual implementation costs and MOUs for 12 months from the date of intraLATA toll presubscription implementation. The LECs were further ordered to file a proposed MOU rate for cost recovery no later than 12 months and 15 days after the date of implementation. The orders stated that the proposed MOU rate would become effective on the 31st day after filing, unless otherwise acted upon by the Commission.

(4) To further discuss the development of the appropriate MOU rate for cost recovery, the Commission ordered the Staff to convene a workshop where all parties of interest should meet to discuss the intraLATA toll cost recovery rate. The Commission encouraged parties to reach agreement rather than pursuing a litigation approach for such a short-term recovery mechanism.

The Staff held the workshop on March 17, 1998. Advance notices of this open workshop were sent to all LECs and all IXCs certified (or seeking certification) in the state of Ohio.

(5) On September 17, 1998, United Telephone of Ohio and Sprint Communications Company L.P. (collectively, Sprint) filed motions to intervene and to suspend the intraLATA presubscription implementation cost recovery charges of all the LECs listed in the above captioned UNC and ATA cases. Sprint argued that the cost recovery charges filed in the above captioned cases may have violated Section X.F. of the Commission's Local Service Guidelines.

(6) Sprint believes that a number of the above captioned LECs calculated their cost recovery rates using only the switched intraLATA access minutes of the interexchange carriers (IXCs). Sprint claims that it calculated its cost recovery rate using the switched intraLATA access minutes of the IXCs and of itself, the local telephone exchange service provider. Sprint argues that its interpretation of how to calculate the cost recovery rate is supported by the language of the local service guidelines.

(7) On September 24, 1998, and October 5, 1998, MCI Telecommunications Corporation (MCI) and AT&T Communications of Ohio, Inc. (AT&T), respectively, filed motions to intervene and suspend the effective date of the intraLATA presubscription implementation charges proposed by the carriers in the above captioned UNC and ATA cases. In addition to raising the same concerns as Sprint, MCI and AT&T also allege that local service guideline X.F. generally follows the cost recovery mechanism established by stipulations in The Western Reserve Telephone Company (WRT) alternative regulation proceeding, Case No. 93-230-TP-ALT, and the Cincinnati Bell Telephone Company (CBT) alternative regulation proceeding, Case No. 93-432-TP-ALT. As a final matter, AT&T and MCI point out that GTE North

Incorporated used its own switched access minutes in calculating the presubscription implementation charge.

(8) On October 5, 1998, the LECs listed in the case caption of this Finding and Order filed memoranda contra the motions to intervene and to suspend filed by Sprint.

(9) Staff has reviewed the MOU cost recovery rates that have been filed and has recommended to the Commission that those rates be approved. It is our understanding that at least some of the above captioned LECs calculated their MOU rates using only the intraLATA switched access minutes of the IXCs. We find the exclusion of the LEC's intraLATA switched access MOUs in the calculation of the LECs cost recovery rate to be a reasonable interpretation of our local service guidelines.

(10) The Commission concurs with the Staff's recommendation and approves the intraLATA toll presubscription cost recovery MOU rates filed in the above captioned ATA and UNC cases.

(11) In the local service guidelines, we state:

> The incremental costs directly associated with the introduction of 1+ intraLATA dialing parity shall be borne by providers of telephone exchange service and telephone toll service. Costs shall be recovered through a Commission-approved switched access per minute of use charge applied to all originating intraLATA switched access minutes generated on lines that are presubscribed for intraLATA toll service. Recovery of these costs shall not include recovery of costs incurred for PIC changes during the initial 90-day no-charge period.

(12) It was our intent that the total costs caused by the implementation of intraLATA toll presubscription be shared by both the LECs and IXCs. By opening their intraLATA toll market to presubscription, the LECs are virtually guaranteed a significant loss in toll revenues as their customers presubscribe away from the LEC. Furthermore, we expressly prohibited the LECs from recovering the costs incurred for PIC changes during the initial 90-day no-charge periods. We believe this represents another significant revenue loss to the LECs. Converse to the costs of the LEC, the opening of the intraLATA toll market to the IXCs produces significant

opportunities for the IXC to access once unobtainable revenues.

(13) It is our opinion that the costs of implementing intraLATA toll presubscription are more equitably shared by assessing an MOU charge to the IXCs and requiring the LECs to absorb the lost revenues and PIC changes during the 90-day no-charge windows. This was our intent when we stated that the rate should be applied to all originating intraLATA switched access minutes generated on lines presubscribed for intraLATA toll service. We did not intend presubscribed to include customers of the LEC that had not acted to make a definitive presubscription selection. In approving the tariffs of the above captioned LECs, the Commission was careful to ensure that current customers of the LEC would retain their current dialing arrangements until the customer made a request to be presubscribed to another carrier. We do not consider customers that have always been with the LEC to be presubscribed.

(14) Additionally, it would be inappropriate to require the LEC to include its own intraLATA toll minutes in the calculation of the MOU rate for cost recovery. In our opinion, it is reasonable for the LECs to assume its share of the costs of creating a new market for the IXCs is covered by the loss in toll revenues and the 90-day no-charge PIC change windows.

(15) We find the statement by AT&T and MCI that the cost recovery mechanism in the WRT and CBT alternative regulation cases follow the local service guideline X.F. to be irrelevant. The introduction of intraLATA presubscription in these alternative regulation cases came about through the negotiated agreement of the parties to these proceedings. Furthermore, these cases were concluded long before the creation and implementation of the Commission's local service guidelines and the passage of the Telecommunications Act of 1996.

(16) Additionally, the AT&T and MCI claim that GTE used its own minutes in the calculation of its cost recovery charge is irrelevant. We are not stating that an ILEC is prohibited from using its own intraLATA switched access minutes of use in the calculation. We are simply clarifying that our intention was that an ILEC would not be required to use its own

intraLATA switched access MOUs in the calculation of the cost recovery charge.

(17) Therefore, we clarify the understanding of Section X.F. of the local service guidelines to mean that the MOU rate for intraLATA toll implementation cost recovery does not need to be calculated using the intraLATA switched access minutes of the LEC. Furthermore, the charge need only be applied to the originating intraLATA switch access minutes generated on lines that are presubscribed for intraLATA toll service from a provider other than the customers original LEC.

(18) Since we have clarified our intent regarding the recovery of the implementation costs associated with intraLATA toll presubscription and since we are by this order approving the MOU rates for cost recovery filed by the above captioned LECs, there is no reason to suspend the tariffs or grant either the Sprint, AT&T, or MCI requests for intervention in these cases. Consequently, all outstanding motions filed by Sprint, AT&T, and MCI in the above captioned cases as denied.

It is, therefore,

ORDERED, That the intent of Section X.F. of the Commission's local service guidelines in Case No. 95-845-TP-COI is clarified as indicated herein. It is, further,

ORDERED, That, by this entry, the intraLATA toll presubscription implementation cost recovery MOU rates filed by the LECs in the above captioned UNC and ATA cases are approved. It is, further,

ORDERED, That in accordance with Findings (18) above, the Sprint, AT&T, and MCI motions for suspension and intervention in the above captioned cases are denied. It is, further,

ORDERED, That nothing in this entry shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That this entry does not constitute state action for the purpose of the antitrust laws. It is not our intent to insulate the applicants herein from the provisions of any state or federal law that prohibits the restraint of trade. It is, further,

ORDERED, That a copy of this entry be served upon United Telephone of Ohio Sprint Communications Company L.P., MCI Telecommunications Corporation, AT&T

Communications of Ohio, Inc., the LECs and their respective counsel in the above captioned cases, and upon any other interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

RSP:dj

Entered in the Journal
OCT 8 1998
A True Copy
Gary E. Vigorito
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues.	)	Case No. 95-845-TP-COI
In the Matters of the Following Local Exchange Carriers to Amend Their Tariffs to Include an IntraLATA Toll Presubscription Service Offering:	)	
Germantown Independent Telephone Company	)	Case No. 96-1200-TP-UNC
Ottoville Mutual Telephone Company	)	Case No. 96-1295-TP-ATA
Telephone Service Company	)	Case No. 96-1312-TP-ATA
Sherwood Mutual Telephone Association, Inc.	)	Case No. 96-1313-TP-ATA
The Nova Telephone Company	)	Case No. 96-1314-TP-ATA
The Arthur Mutual Telephone Company	)	Case No. 96-1315-TP-ATA
Ayersville Telephone Company	)	Case No. 96-1316-TP-ATA
Doylestown Telephone Company	)	Case No. 96-1321-TP-ATA
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Sycamore Telephone Company	)	Case No. 96-1334-TP-ATA
Minford Telephone Company	)	Case No. 96-1335-TP-ATA
Vaughnsville Telephone Company, Inc.	)	Case No. 96-1337-TP-ATA
Ft. Jennings Telephone Company	)	Case No. 96-1343-TP-ATA
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The Farmers Mutual Telephone Company	)	Case No. 96-1345-TP-ATA
ALLTEL Ohio, Inc.	)	Case No. 96-1351-TP-ATA
Western Reserve Telephone Company	)	Case No. 96-1352-TP-ATA
Chillicothe Telephone Company	)	Case No. 96-1355-TP-ATA
New Knoxville Telephone Company	)	Case No. 96-1361-TP-ATA
Ridgeville Telephone Company	)	Case No. 96-1362-TP-ATA
Arcadia Telephone Company	)	Case No. 96-1395-TP-ATA
Little Miami Communications Corporation	)	Case No. 96-1397-TP-ATA
Vanlue Telephone Company	)	Case No. 96-1398-TP-ATA
Oakwood Telephone Company	)	Case No. 96-1399-TP-ATA
Wabash Mutual Telephone Company	)	Case No. 96-1401-TP-ATA

ENTRY ON REHEARING

The Commission finds:

(1) In a finding and order issued on October 8, 1998, in Case No. 95-845-TP-COI et al., the Commission concurred with the staff's recommendation and approved the intraLATA toll presubscription cost recovery minutes of use (MOU) rates filed in the above captioned ATA and UNC cases. In making this determination, the Commission interpreted local service guideline X.F. to mean that the total costs caused by the implementation of intraLATA toll presubscription should be shared by both the local exchange carriers (LECs) and the interexchange carriers (IXCs). We further clarified that, while an incumbent LEC was not prohibited from using its own intraLATA switched access MOUs to calculate its intraLATA cost recovery, neither was it required to use its own intraLATA switched access MOUs to calculate the cost recovery charge.

The Commission's October 8, 1998 finding and order also clarified it was not our intent through the adoption of local service guideline X.F. for presubscribed lines to include current customers of the LECs that had not acted to make a definitive presubscription selection. The Commission noted that, by opening their intraLATA toll market to presubscription, the LECs were virtually guaranteed a significant loss in toll revenues as their customers presubscribed away from them. Further, the Commission pointed out that the LECs were specifically prohibited, pursuant to local service guideline X.F., from recovering the costs incurred for PIC changes during the initial 90-day no-charge time period. These two items alone, the Commission found, represented a revenue loss for the LECs. Converse to the revenue loss of the LEC, the Commission found that the opening of the intraLATA toll market produces significant opportunities for the IXCs to access once unobtainable revenues.

(2) On November 9, 1998, a joint application for rehearing of the Commission's October 8, 1998 finding and order was timely filed by AT&T Communications of Ohio, Inc. (AT&T) and by MCI Telecommunications Corporation (MCI) pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code. Memoranda contra

the joint application for rehearing were filed on behalf of the above captioned LECs.

(3) In support of the joint application for rehearing, AT&T and MCI assert that: (i) the Commission's October 8, 1998 order was unreasonable and unlawful as it improperly interpreted the plain terms of local service guideline X.F. and is otherwise directly contrary to the Commission's interpretation of the rule at the time it was adopted; (ii) the Commission's October 8, 1998 order is inconsistent with local service guideline X.F. and, thus, adopted a new cost recovery standard for which the Commission failed to comply with the adoption and filing requirements of Section 111.15, Revised Code; and (iii) the Commission's improper construction of local service guideline X.F. is otherwise unlawful and unreasonable as it ignores the important policy reasons for recovering the costs of intraLATA presubscription over all intraLATA minutes.

(4) The joint application for rehearing filed by AT&T and MCI is denied. The Commission did not, as AT&T and MCI allege, improperly interpret the plain meaning of local service guideline X.F. Rather, the Commission merely clarified that incumbent LEC customers who had not made an affirmative presubscription selection were not included in the term "presubscribed." This was a reasonable clarification of the applicable MOU cost recovery mechanism. Local service guideline X.F. provides as follows:

> [T]he incremental costs directly associated with the introduction of 1+ intraLATA dialing parity shall be borne by providers of telephone exchange service and telephone toll service. Costs shall be recovered through a Commission-approved switched access per minute of use charge applied to all originating intraLATA switched access minutes generated on lines that are presubscribed for intraLATA toll service. Recovery of these costs shall not include recovery of costs incurred for PIC changes during the initial 90-day no-charge period.

Had the Commission intended in our local service guidelines that the cost recovery for 1+ intraLATA dialing parity

was to be recovered based on the switched access minutes generated on all lines for intraLATA toll service, then it would not have been necessary to include the descriptive term "presubscribed." Moreover, AT&T and MCI are incorrect when they argue that, under the cost recovery mechanism set forth in the October 8, 1998 finding and order, the incumbent LECs are not sharing the costs of implementing 1+ intraLATA dialing parity. Consistent with the first sentence of guideline X.F., both the LECs and the IXCs are sharing in the costs associated with 1+ intraLATA dialing parity. They are just absorbing costs in a different form. As we clearly pointed out in our October 8, 1998 finding and order, through the introduction of 1+ intraLATA dialing parity, the incumbent LECs face toll revenue losses and must absorb the costs associated with the 90-day no-charge PIC changes. The IXCs, on the other hand, pay a charge for each minute of use generated by customers who presubscribe with the IXCs. Since the IXCs stand to gain significantly from the opportunity afforded by opening the intraLATA toll market to 1+ competition, the Commission believes this to be a fair result.

AT&T and MCI also argue that because the Commission responded to an issue raised by Sprint on rehearing in the 845 proceeding, the Commission must have intended "presubscribed" to include intraLATA minutes of all carriers including the incumbent LECs. Otherwise, according to AT&T and MCI, it would not have had to deny Sprint's application for rehearing. In actuality, what the Commission addressed on rehearing in 845 was Sprint's argument that it would be unreasonable to recover the costs of intraLATA toll dialing parity by spreading the costs solely over minutes of use on an intraLATA basis rather than over combined interLATA and intraLATA minutes of use. Because the Commission rejected the inclusion of interLATA minutes of use in the 1+ cost recovery mechanism, the Commission had to deny Sprint's application for rehearing in 845.

Finally, on AT&T and MCI's first assignment of error, we note that we thoroughly addressed in the October 8, 1998 finding and order the arguments concerning the WRT and CBT alternative regulation cases and the GTE intraLATA dialing parity cost recovery mechanism.[1] AT&T and MCI

[1] Even AT&T and MCI recognized in their respective motions to intervene that 845 guideline X.F. is consistent with the cost recovery mechanisms adopted in the CBT and WRT alternative regulation

have raised nothing new on rehearing. We point out, however, that in addition to our earlier justification on the GTE cost recovery mechanism, we also note that GTE's cost recovery mechanism was filed prior to the adoption of guideline X.F. involving 1+ cost recovery. GTE filed its application for 1+ on May 10, 1996, before the original decision in 845. Therefore, like the arguments raised concerning the WRT and CBT alternative regulation cases, we see no relevance in comparing the GTE cost recovery mechanism to the subsequently finalized intraLATA cost recovery mechanism set forth in local service guideline X.F. Moreover, we see no reason why GTE, for other business reasons, should be prohibited from absorbing additional costs if it so chooses.

(5) AT&T and MCI next aver that the Commission's October 8, 1998 finding and order implemented a new rule which, after June 1997, the General Assembly made clear would subject the Commission to the requirements of Section 111.15, Revised Code. AT&T and MCI's assignment of error on this issue is denied. AT&T and MCI suggest through this assignment of error that the Commission's October 8, 1998 finding and order is inconsistent with past interpretation of local service guideline X.F. and, thus, represents a new rule for 1+ intraLATA cost recovery. We disagree with the AT&T and MCI argument that the October 8, 1998 finding and order represented an inconsistent, past interpretation of local service guideline X.F. The October 8, 1998 finding and order represented the first opportunity that the Commission has had to apply local service guideline X.F. since the effective date of the 845 guidelines. Thus, there has been, prior to October 8, 1998, no opportunity in the past to apply this provision let alone for the October 8, 1998 interpretation to be inconsistent. We also note that, while AT&T and MCI frequently refer to the Commission's decision in the October 8, 1998 finding and order as a "new rule," the Commission has not, and AT&T and MCI do not allege, made any changes in the language of local service guideline X.F. Indeed, we note that the June 12, 1996 finding and order in 845 is consistent with our interpretation in our October 8, 1998 finding and order. In that earlier finding and order we found "that the most appropriate method of cost recovery is to spread the implementation costs over all

cases. AT&T and MCI were signatory parties to the stipulations which were subsequently adopted in those alternative regulation cases.

minutes of use presubscribed on an intraLATA basis rather than over combined interLATA and intraLATA MOUs. June 12, 1996 finding and order, page 56. (Emphasis added.)

(6) The final assignment of error set forth by AT&T and MCI claims that the Commission's decision is unlawful and unreasonable in that it rewards the incumbent LECs for keeping monopoly control of their markets. This is, according to AT&T and MCI, just the decision reached by other Ameritech states and the Federal Communications Commission (FCC) in its Second Report and Order in CC Docket No. 96-98. Second Report and Order, CC Docket No. 96-98, ¶95 (rel. August 6, 1996). Contrary to the assertion of AT&T and MCI, excluding the incumbent LECs non-presubscribed minutes of use from the 1+ intraLATA cost recovery mechanism does not "reward" the incumbent LECs. As we noted in both the October 8, 1998 finding and order and in this entry on rehearing, the incumbent LECs share in the costs of 1+ intraLATA presubscription by absorbing revenue lost from customers who presubscribe to another carrier for intraLATA service and by absorbing the costs associated with the 90-day no-charge PIC period. Thus, contrary to the arguments of AT&T and MCI, the incumbent LECs are sharing in the cost of intraLATA presubscription implementation.

We also find that the reliance of AT&T and MCI on decisions from other jurisdictions is misplaced. While we are aware and have considered other state commission decisions on this issue, based upon the record and the arguments noted herein, we find that our decision is appropriate based on the circumstances present in Ohio. Further, we find that our 1+ intraLATA cost recovery mechanism is consistent with the FCC's Second Report and Order in CC Docket No. 96-98. We note that the relevant provision of the FCC's Second Report and Order in CC Docket No. 96-98 is that any cost recovery mechanisms must be competitively neutral. As we have noted above, local service guideline X.F. sets forth a cost recovery mechanism that allocates costs to both incumbent LECs and IXCs and does so in a competitively neutral manner. Adoption of the position expressed by AT&T and MCI would not be competitively neutral in that the incumbent LECs would be forced to absorb substantially more of the costs associated

with implementing 1+ intraLATA dialing parity than the IXCs.

For all of the foregoing reasons, the joint application for rehearing filed by AT&T and MCI is denied.

It is, therefore,

ORDERED, That the joint application for rehearing submitted by AT&T Communications of Ohio, Inc. and MCI Telecommunications Corporation is denied as set forth in the above findings. It is, further,

ORDERED, That copies of this entry on rehearing be served upon AT&T, MCI, the incumbent LECs set forth in the caption of this entry, their respective counsel, and upon all parties and interested persons of record in Case No. 95-845-TP-COI.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Ronda Hartman Fergus

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Donald L. Mason

JRJ;geb

Entered in the Journal
DEC 9 1998
A True Copy
Gary E. Vigorito
Secretary

SERVICE NOTICE

CASE NUMBER 96-1200-TP-UNC

CASE DESCRIPTION GERMANTOWN INDEPENDENT TELEPHONE

DOCUMENT SIGNED ON December 9, 1998

DATE OF SERVICE 12-10-98

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